

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, DC 20554

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
RCC Holdings, Inc.)	
)	
Petition for Designation as an)	
Eligible Telecommunications Carrier)	
in the State of Alabama)	
To: Wireline Competition Bureau		

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Reply Comments of RCC Holdings, Inc.

RCC Holdings, Inc. ("RCC"), by counsel and pursuant to the Commission's Public Notice, DA 02-746 (rel. April 2, 2002), hereby submits its Reply Comments in the above-captioned proceeding.

I. Introduction

The Alabama Rural Local Exchange Carriers ("Rural LECs") have failed to raise any issues that would warrant denial or delay of RCC's request for designation as an eligible telecommunications carrier ("ETC") in Alabama. The Alabama Public Service Commission ("APSC") has provided an affirmative statement that it lacks jurisdiction to rule on requests for ETC designation by CMRS carriers. Contrary to the Rural LECs' assertion, the APSC's Order¹ was not limited in application to "another CMRS carrier not similarly situated to RCC" but in fact applies explicitly to all CMRS carriers as a class — a fact the APSC acknowledged in its own comments to

¹ Pine Belt Cellular, Inc. and Pine Belt PCS, Inc., Docket U-4400 (rel. Mar. 12, 2002) ("APSC Order").

the FCC.²

RCC currently offers all of the services and functionalities required of ETCs under the Commission's rules, and has shown that it is capable and committed to provide universal service. By arguing that ETC designation should be withheld until a carrier actually offers and advertises its services on every inch of its territory, the Rural LECs demonstrate a fundamental misunderstanding of the federal Communications Act and the FCC's universal service rules. Moreover, the Rural LECs attempt to erect a performance standard for RCC that has never been required of wireless carriers.

Grant of RCC's request will begin to level the competitive playing field and provide incentives for all of the affected LECs to lower their prices and improve service. Alabama's customers will realize improved service because RCC will improve infrastructure in areas that cannot support first-rate service without the provision of high-cost support.

RCC is constrained to note that Rural LEC member Pine Belt Telephone Company, Inc. and ALLTEL Alabama, Inc. did not join the group in their comments.³ Pine Belt's affiliates, Pine Belt Cellular, Inc. and Pine Belt PCS, Inc., recently received ETC status from the FCC on the strength of the identical *APSC Order* the Rural LECs object to in this proceeding.⁴ On the merits, virtually every aspect of RCC's petition which the Rural LECs consider deficient was also present in Pine Belt Cellular's recent application (*e.g.*, the lack of "ubiquitous" coverage). ALLTEL, as one of the largest wireless carriers in the country, has ample motive to sit out this proceeding so as to preserve its future ability to apply for ETC status on behalf of its wireless affiliates.

² Comments of the Alabama Public Service Commission (filed May 23, 2002).

³ Comments of the Rural LECs at p. 3 n.3.

⁴ *See APSC Order*.

The Rural LECs are motivated by the simple desire to forestall subsidized competitive entry and preserve their monopoly in rural areas. Because RCC has shown that it meets all the statutory and regulatory prerequisites for ETC designation, and designating RCC as an ETC will serve the public interest, the FCC should grant RCC's petition expeditiously.

II. RCC Has Provided an Affirmative Statement of the Alabama Public Service Commission That It Lacks Jurisdiction Over ETC Designation of CMRS Carriers

In its initial filing before the FCC on March 19, 2002, RCC provided a copy of a letter from Administrative Law Judge John A. Garner to Phyllis A. Whitten, counsel for Pine Belt Cellular and Pine Belt PCS, declaring that the APSC does not have jurisdiction over CMRS carriers. On March 26, 2002, RCC amended its filing to provide a copy of an order of the APSC stating that "the APSC's jurisdiction to grant Eligible Telecommunications Carrier status for universal service purposes does not extend to providers of cellular services, broadband personal communications services, and commercial mobile radio services."⁵ Therefore, the APSC concluded, "[p]roviders of such services seeking Eligible Telecommunications Carrier status should . . . pursue their requests through the Federal Communications Commission."⁶ The APSC's statement is as direct as it is unambiguous: *The APSC lacks jurisdiction over requests by CMRS carriers for ETC designation; therefore, such requests should be filed with the FCC.* Indeed, the APSC confirmed this statement in its comments to the FCC in this proceeding, raising no objections to RCC's petition on jurisdictional grounds.⁷

⁵ *APSC Order* at p. 2.

⁶ *Id.* at p. 4.

⁷ Comments of the APSC at p. 1.

The Rural LECs argue that the APSC's statement is not applicable to RCC because it was in a letter "directed to the counsel of another CMRS carrier" that was "not similarly situated to RCC."⁸ Aside from ignoring RCC's amended filing which provided the *APSC Order*, not a letter to counsel, the Rural LECs misconstrue the requirements of 47 U.S.C. § 214(e) by insisting that the APSC's statement should have named RCC individually. This is plainly incorrect. In fact, in the very paragraph of the FCC's *Twelfth Report and Order* cited by the Rural LECs, the FCC emphasized that state commissions should have an opportunity to "address and resolve issues involving a state commission's authority under state law to regulate certain carriers *or classes of carriers*."⁹ Thus, it is clear that the FCC specifically contemplated statements such as that issued by the APSC in the instant case. The APSC's order referenced the entire class of CMRS carriers, of which RCC is a member. As such, the APSC's statement clearly applies to RCC's request for ETC designation.

III. RCC Offers All of the Services and Functionalities Required of ETCs and Has Demonstrated Its Ability and Commitment to Provide Universal Service

In its petition, RCC explained how it will provide each of the services required under 47 C.F.R. § 54.101(a). Consistent with the FCC's *Section 214(e)(6) Public Notice*,¹⁰ RCC stated that it will offer the supported services through its own facilities. Additionally, RCC certified that it will

⁸ Comments of the Rural LECs at p. iv.

⁹ *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, 15 FCC RCD 12208, 12264 (2000) ("*Twelfth Report and Order*") (emphasis added).

¹⁰ *See, Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act, Public Notice*, 12 FCC Rcd 22947 (1997) ("*Section 214(e)(6) Public Notice*").

advertise its universal service offering throughout the service areas designated by the FCC.

Although RCC has amply demonstrated its capability and commitment to provide the supported services throughout its designated service area, the Rural LECs would require RCC to show that it is *actually providing* the supported services in every corner of its requested services area. Specifically, the Rural LECs argue that RCC fails to satisfy the requirements under Section 214(e)(1) due to (1) “gaps” in coverage within its network; (2) failure to allege that it currently provides local usage; (3) lack of ubiquitous emergency calling capability; and (4) lack of evidence that RCC will advertise the supported services.

These arguments directly contradict the clear language of the Act and the FCC’s orders, which state that a carrier is only required to provide the supported services once it is designated as an ETC.¹¹ The FCC confirmed this fact in its *Declaratory Ruling* regarding Western Wireless’ request for ETC designation in South Dakota, concluding that “[t]he language of the statute does not require the actual provision of service prior to designation.”¹²

To require actual provision of the supported services prior to designation would make no sense in light of the pro-competitive goals of the Telecommunications Act of 1996. Requiring a carrier to offer and advertise all of the supported services throughout its service area prior to being designated as an ETC would effectively preclude competitive entry. As the FCC has emphasized, a competitor is unlikely to be able to make a substantial investment to construct a network in a high-

¹¹ See 47 U.S.C. § 214(e)(1); *Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, FCC 00-248 at ¶ 10 (rel. Aug. 10, 2000) (“*Declaratory Ruling*”).

¹² *Declaratory Ruling* at ¶ 14.

cost area if it is uncertain that it will receive the universal service support necessary for such an undertaking.¹³

Some of the requirements the Rural LECs seek to impose on RCC have never been required of other ETC applicants, and it is unlikely that the Rural LECs could satisfy them. For example, the Rural LECs' assert that RCC does not provide single-party voice grade service in all of the areas where it requests ETC designation and that there are "dead spots" in RCC's network.¹⁴ The FCC has rejected the notion of requiring carriers to provide service to every potential customer throughout its service area prior to receiving ETC designation.¹⁵ Moreover, no carrier — whether wireline or CMRS — provides service to every corner of its service area. Instead, the logical expectation is that a carrier will grow its network to provide service upon request. Indeed, the Rural LECs have for years used high-cost support to extend their networks to unserved and underserved areas.

According to the FCC's most recent report on telecommunications subscribership in the U.S., Alabama ranks among the fifteen states with the lowest telephone penetration levels in the country.¹⁶ The Rural LECs attempt to distract the Commission from the facts by touting the Gulf Telephone Company's coverage of Foley, Alabama, which is located far outside of RCC's requested service area. In showcasing Foley, "[o]ne of the largest Alabama cities served by the Alabama Rural

¹³ *See id.* at ¶ 13.

¹⁴ Comments of the Rural LECs at p. 10.

¹⁵ *See Section 214(e)(6) Public Notice* at ¶ 17.

¹⁶ *See* "Telephone Subscribership in the United States" at p. 9 (rel. May 21, 2002).

LECs,”¹⁷ the Rural LECs ignore RCC’s proposed ETC service area, which is almost exclusively rural in character and has little in common with Foley.

The Rural LECs provide affidavits of Rural LEC employees attesting to their inability to complete a call at a given point within RCC’s service area at a given time. These allegations have no bearing on RCC’s commitment or capability to provide high-quality service to customers throughout its designated service area. When the Rural LECs began receiving universal service support, they did not serve their entire service area. It is the high-cost support that enabled the Rural LECs to extend their networks into high-cost areas, to the benefit of Alabama consumers. Likewise, RCC will use high-cost support to improve its network and enable Alabama’s rural consumers to have a meaningful choice of service providers.

The Rural LECs also miss the mark in asserting that gaps in RCC network might render a subscriber unable to access emergency services “depending on where the caller stands within the residence.”¹⁸ Indeed, the same (specious) argument could be made with regard to landline telephones, which are arguably useless to a subscriber standing in another room. Similarly, an individual standing on a street corner that lacks a pay phone could properly complain that the local wireline telephone company has failed to provide coverage for that particular spot.

RCC is not required to provide “ubiquitous” service. It is required to serve customers upon request, which it can and will do. The Rural LECs have not provided any grounds to doubt RCC’s capability or commitment to provide the supported services throughout the requested service area.

¹⁷ Comments of the Rural LECs at p. 3.

¹⁸ *Id.* at p. 14.

IV. Grant of RCC's Request for ETC Status Will Serve the Public Interest

The Rural LECs claim that such a grant of ETC status to RCC would “harm consumers and undermine the federal universal service fund”.¹⁹ Quite to the contrary, the requested designation will lift barriers to competition and benefit consumers by spurring the improvement of service quality and the rapid deployment of new telecommunications technologies by both RCC and the affected Rural LEC companies.²⁰

In sum, RCC has amply demonstrated that the public interest will be served by the introduction of competitive service in the proposed ETC service area. Far from providing “targeted” coverage,²¹ RCC offers mobile telecommunications services throughout its licensed service area, which includes large rural areas. Coverage gaps can and will be filled once RCC begins receiving high-cost support.

The public interest analysis must take into consideration that fact that there is simply no business plan, wireline or wireless, which enables a carrier to provide high-quality local exchange service to customers in most remote areas, unless high-cost support is provided. In the absence of high-cost support, wireless service will only be seen as a convenience, and will not offer rural customers a choice of local service providers that many urban customers enjoy today. With high-cost support, a wireless carrier such as RCC will be able to improve its network and offer alternative services, which will spur competitive offerings from incumbents, all to the customer's benefit.

¹⁹ *Id.* at p. 16 (footnote omitted).

²⁰ Telecommunications Act of 1996, Public Law 104-104, 100 Stat. 56 (1996).

²¹ Comments of the Rural LECs at p. 20.

V. The Rural LEC Service Areas Should be Redefined as Proposed by RCC

The Rural LECs present no persuasive argument against RCC's proposal to redefine affected LEC service areas. Most of the Rural LEC policy arguments on this issue are better directed to the Commission in ongoing rulemaking proceedings.

The Rural LECs' general concerns about cream skimming should have been resolved by their respective filings on May 15, 2002, to disaggregate support.²² The Rural LECs ignore that it is they, not competitive ETCs, who determine the manner in which high-cost support is to be calculated and distributed. *See* 47 C.F.R. § 54.307(a)(1). Several of the Rural LECs, including Frontier Communications of Alabama, Inc., Frontier Communications of the South, and Millry Telephone Company, have self-certified plans which disaggregate support below the study-area level. Other Rural LECs opted for no disaggregation. RCC did not have a say in the manner in which support will be targeted and distributed; thus, any remaining concern about cream skimming is as a result of the Rural LECs' own doing.

Redefining Rural LEC service areas as proposed in RCC's application is required to permit RCC to be designated as an ETC throughout its proposed service area. Moreover, RCC has not selected the lowest-cost areas for ETC designation, but rather it has committed to provide service throughout its FCC licensed area. That area is rural in character, and includes remote areas that will not receive competitive service without the provision of high-cost support. Accordingly, RCC urges the FCC to redefine the affected Rural LEC service areas as proposed in the application.

²² *See Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Fourteenth Report and Order, Twenty Second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 11294, 11299-309 (2001) ("*Fourteenth Report and Order*").

VI. Other Issues

The Rural LECs raise a litany of minor issues which merit no more than a summary response. The assertion by the Rural LECs that “no adequate protections exist to insure that universal support paid to RCC . . . will be used to *benefit subscribers* that use the service *within* the requested designation area”²³ is without merit. RCC must certify to the Commission that such support is used only for the construction, maintenance and upgrading of facilities serving the rural areas for which support is intended. *See* 47 C.F.R. § 54.314(b). As the Commission has emphasized, “ETC designation prior to the provision of service does not mean that a carrier will receive support without providing service.”²⁴ Moreover, RCC must submit to audits, and risks losing ETC status or its FCC license for non-compliance. RCC therefore has every incentive to provide service in rural areas where it is needed most and lawfully spend high-cost support funds.

Without any supporting evidence, the Rural LECs state that the mobility of RCC’s customers will provide RCC with an incentive to target areas with high levels of per-line support. The Rural LECs explain their theory by claiming that RCC’s subscribers in rural ILEC territory will “actually use the service outside the designated service area.” Therefore, the Rural LECs claim, it is “highly probable” that “high cost support will be paid to RCC for services used in low-cost, urban areas.”²⁵

RCC cannot target low-cost urban areas, for two reasons. First, there are no urban areas within the RSAs that RCC is licensed to serve. Second, the Rural LECs are able to disaggregate support so as to reduce available subsidies in low-cost areas.

²³ Comments of the Rural LECs at p. 17 (emphasis in original).

²⁴ *See Declaratory Ruling* at ¶ 15.

²⁵ *Id.* at p. 17.

The idea that a wireless phone may “roam” into an urban area is not new. The FCC has granted ETC status to several carriers who propose to provide mobile service. Restrictions on mobility have been rejected across the country.²⁶ As noted above, all high-cost funds will be used to construct upgrade and maintain RCC’s network. That a customer may roam outside of RCC’s service area, a feature not included in basic universal service provided by RCC, is irrelevant.

Introducing competition into monopolistic LEC territory will not create “rate spirals” or otherwise harm the public interest.²⁷ As RCC demonstrated in its petition, a grant of RCC’s request will bring to consumers the benefits of competition, including increased choices, higher quality service, and lower rates.²⁸ Competition benefits consumers and inevitably, it introduces new risks and challenges to the previously entrenched incumbents, many of which, as the Rural LECs admit, rely on “a few large business customers.”²⁹ If these and other monopolistic business practices are disrupted by the introduction of a competitor, this is a reason to grant, not deny, RCC’s request.

The Rural LECs’ improperly rely on the APSC’s 1997 universal service order in arguing for a strict standard of review for competitive ETC designations.³⁰ Whatever the APSC’s standards for granting requests for ETC designation by wireline carriers, those standards do not apply to the instant Petition, which is outside the APSC’s jurisdiction. The FCC has made a policy judgment that

²⁶ See, e.g., Smith Bagley, Inc., Final Order, Utility Case No. 3026 (Feb. 19, 2002) (New Mexico).

²⁷ Comments of the Rural LECs at p. 21.

²⁸ RCC Petition at p. 14.

²⁹ Comments of the Rural LECs at p. 21.

³⁰ See *id.* at p. 8.

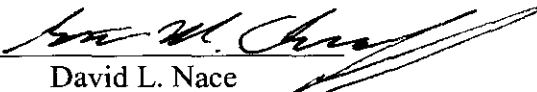
encouraging competitive ETCs to apply for high-cost support will serve the public interest by developing infrastructure investment in rural areas.³¹ It has also consistently granted applications for ETC status, noting that there is no evidence that competitive entry in even remote areas will have negative effects on incumbent carriers. Accordingly, there is no reason to apply a higher standard of review to RCC's petition.

VII. Conclusion

For the reasons set forth above, RCC respectfully requests the Commission to reject the arguments of the Rural LECs and grant RCC's request for designation as an ETC in Alabama on an expedited basis.

Respectfully submitted,

RCC Holdings, Inc.

By 
David L. Nace
David A. LaFuria
Steven M. Chernoff
Its Attorneys

Lukas, Nace, Gutierrez & Sachs, Chartered
1111 Nineteenth Street, N.W., Suite 1200
Washington, D.C. 20036
(202) 857-3500

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³¹ See, e.g., *Federal-State Joint Board on Universal Service, First Report and Order*, 12 FCC Rcd 8776, 8802-3, 8944 (1997); *Western Wireless Corp., Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, 16 FCC Rcd 48, 55 (2000); *Guam Cellular and Paging, Inc. d/b/a Guamcell, Petition for Designation as an Eligible Telecommunications Carrier in the Territory of Guam*, DA 02-174, ¶ 15 (rel. Jan. 25, 2002).

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

CERTIFICATE OF SERVICE

I, Janelle Wood, hereby certify that I have, on this 7th day of June, 2002, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing REPLY COMMENTS OF RCC HOLDINGS, INC. filed today to the following:

*Katherine Schroder
Chief, Telecommunications Access Policy
Federal Communications Commission
445 12th Street, S.W.
Room 5-A423
Washington, DC 20554

*Richard Smith
Telecommunications Access Policy Div.
Federal Communications Commission
445 12th Street, S.W.
Room 5-A660
Washington, DC 20554

*Anita Cheng
Wireline Competition
Telecommunications Access Policy Div.
Federal Communications Commission
445 12th Street, S.W.
Room 5-A445
Washington, DC 20554

Walter L. Thomas, Jr., Secretary
Alabama Public Service Commission
RSA Building
100 North Union Street
Suite 850
Montgomery, AL 36101

William W. Jordan
Vice President - Federal Regulatory
BellSouth Telecom Inc.
1133 21st
Suite 900
Washington, D.C. 20036

John M. Wilson
Regional Manager/Legislative Affairs
Verizon Mid-States/Verizon South, Inc.
100 N. Union Street
Suite 132
Montgomery, AL 36104

Frontier Communications of Lamar County
180 South Clinton Avenue
4th Floor
Rochester, New York 14646

Pine Belt Telephone Company, Inc.
c/o Kraskin, Lesse & Cosson, LLP
2120 L Street, N.W.
Suite 520
Washington, D.C. 20037

Jesse Powell
President
Hayneville Telephone Company Inc.
P.O. Box 175
210 Tuskeena Street
Hayneville, AL 36040

Larry P. Taylor
Vice President/General Manager
Moundville Telephone Company
P.O. Box 587
Market Street
Moundville, AL 35474

Bobby Williams
Comptroller/Operations Manager
Millry Telephone Company
P.O. Box 45
Highway 17, North
Millry, AL 36558

Jerry McGhee
Manager
Mon-cre Telephone Cooperative, Inc.
P.O. Box 125
Main Street
Ramer, AL 36069

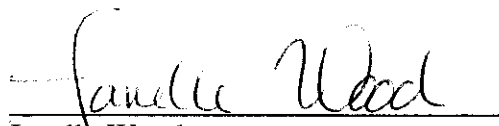
Roanoke Telephone Company Inc.
c/o James U. Troup
Arter & Hadden, LLP
1801 K Street, N.W.
Suite 400 K
Washington, D.C. 20006-1301

John H. Vaughan
President/General Manager
GTC, Inc.
502 Cecil G. Costin Jr. Blvd.
Port St. Joe, FL 32456

Butler Telephone Company, Inc.
c/o Peter Connelly
Holland & Knight LLC
2099 Pennsylvania Avenue, NW
Washington, D.C. 20006

Carolyn C. Hill
Vice President/Federal Regulatory Affairs
Alltel Corporation
601 Pennsylvania Avenue, N.W.
Suite 720
Washington, D.C. 20004

Interstate Telephone Company Inc.
Attn: Lesley Hanchrow
Alston Bird, LLP
601 Pennsylvania Avenue, N.W.
North Building, 11th Floor
Washington, DC 20004-2601


Janelle Wood

* Via Hand Delivery and E-mail